

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARY JANE GLOWCZENSKI and JEAN GRIFFIN,
Individually and as the Co-Administratrix
of the Estate of DAVID GLOWCZENSKI,

Docket No.:CV-04-4053
(WDW)

Plaintiffs,

-against-

VILLAGE OF SOUTHAMPTON, SOUTHAMPTON
VILLAGE POLICE DEPARTMENT, POLICE OFFICER
Brian Platt, in his individual and official
capacity POLICE OFFICER Marla Donovan,
in her individual and official
capacity, POLICE OFFICER Chris Wetter,
in his individual and official capacity,
POLICE OFFICER Arthur Schucht, in his
individual and official capacity, COUNTY OF SUFFOLK,
SUFFOLK COUNTY POLICE DEPARTMENT,
LIEUTENANT Jack Fitzpatrick, in his individual and
official capacity, LIEUTENANT Howard Lewis, in his
individual and official capacity, John Doe 1-10, who are
known by name to the Defendants but as of yet are not
fully known to the Plaintiffs, OFFICE OF THE SUFFOLK
COUNTY MEDICAL EXAMINER, James C. Wilson, M.D.,
Deputy Medical Examiner, in his individual and official
capacity, SOUTHAMPTON VILLAGE VOLUNTEER
AMBULANCE (a.k.a. SOUTHAMPTON E.M.T.UNIT),
Melissa Croke, EMT, in her individual and official capacity,
Keith Phillips, EMT, in his individual and official capacity,
Tim Campbell, EMT, in his individual and official capacity,
and James Moore, Ambulance Driver, in his individual and
official capacity,

Defendants.

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**DECLARATION OF FREDERICK K. BREWINGTON
IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS' VILLAGE OF SOUTHAMPTON,
SOUTHAMPTON VILLAGE POLICE DEPARTMENT, POLICE OFFICER MARLA
DONOVAN, POLICE OFFICER CHRIST WETTER, POLICE OFFICER ARTHUR
SCHUET, AND LIEUTENANT HOWARD LEWIS REVISED DAUBERT MOTION**

**SEEKING TO PRECLUDE THE TESTIMONY OF PLAINTIFFS' EXPERTS
DR WILLIAM MANION**

I, FREDERICK K. BREWINGTON, declare under the pains and penalties of perjury pursuant to 28 U.S.C. §1746, that the following statements are true and correct, to the best of my knowledge:

1. I am one of the attorneys representing **PLAINTIFFS MARY JANE GLOWCZENSKI and JEAN GRIFFIN**. I submit this Declaration in support of Plaintiffs' Memorandum of Law and Supporting Papers in Opposition to Defendants **VILLAGE OF SOUTHAMPTON, SOUTHAMPTON VILLAGE POLICE DEPARTMENT, POLICE OFFICE MARLA DONOVAN, POLICE OFFICER CHRIS WETTER, POLICE OFFICER ARTHUR SCHUCHT, AND LIEUTENANT HOWARD LEWIS**' (herein "Defendants") *DAUBERT* Motion seeking to preclude the testimony of Plaintiffs' Expert Dr. William Manion.
2. Attached as Exhibit A is a true and accurate copy of Alan M. Leiken Dep. (June 28, 2010).
3. Attached as Exhibit B is a true and accurate copy of Expert Report by Alan M. Leiken, Ph.D., Economic Loss Analysis, Mr. David Glowczenski (deceased), (March 24, 2009).
4. Attached as Exhibit C is a true and accurate copy of, Mary Jane Glowczenski Deposition (March 3, 2008).
5. Attached as Exhibit D is a true and accurate copy of, Letter Dated March 24, 2009 to Dr. Alan M. Leiken, Re: Glowczenski, et. al. v. Village of Southampton and Glowczenski v. Taser International, From Precilla Lockett (enclosures included).
6. Attached as Exhibit E is a true and accurate copy of, Letter Dated March 24, 2009,

to Alan Leiken, Ph.D, Re: David Glowczenski, deceased, From Ira Foelgaren).

7. Attached as Exhibit F is a true and accurate copy of, Excerpts from Suffolk County Department of Planning, Demographic, Economic, and Development Trends, Suffolk County, New York (April 2005).

8. Attached as Exhibit G is a true and accurate copy of, Long Island Regional Planning Board, Staff Report to Board, Data on Households and Homeownership by Age Group (March 13, 2007).

9. Attached as Exhibit H is a true and accurate copy of, Toxicology Report Conducted on David Glowczenski by Suffolk County Medical Examiner.

10. Attached as Exhibit I is a true and accurate copy of, transcript of Plaintiff Jean Griffin's deposition conducted on March 4, 2008.

11. Attached as Exhibit J is a true and accurate copy of, transcript of Teddy Glowczenski's deposition conducted on March 5, 2008.

12. Attached as Exhibit K is a true and accurate copy of, Expert Report and Resume of Edward Mamet, CPP, CFE, dated March 2009.

13. Attached as Exhibit L is a true and accurate copy of transcript of Edward Mamet deposition on Feb. 16, 2010.

14. Attached as Exhibit M is a true and accurate copy of Dr. Lone Thanning Curriculum Vitae, dated March 2010.

15. Attached as Exhibit N is a true and accurate copy of transcript of Sgt. Arthur Schucht deposition conducted on January 29, 2009.

16. Attached as Exhibit O is a true and accurate copy of transcript of Dr. Lone Thanning

deposition conducted on May 26, 2010.

17. Attached as Exhibit P is a true and accurate copy of David Glowczenski Autopsy Photographs.
18. Attached as Exhibit Q is a true and accurate copy of Dr. Lone Thanning Second Amended Autopsy Report, dated November 23, 2005.
19. Attached as Exhibit R is a true and accurate copy of, Nasiripour, Shahien & the Center for Investigative Reporting, California Lawyer, Zapping Taser: A surprise Plaintiffs win Highlights a Scientific Mystery: Why do Some People Die After Being shocked Repeatedly with Sun Guns? dated December 01, 2008.
20. Attached as Exhibit S is a true and accurate copy of James R. Jauchem, Forensic Science International, Acidosis, Lactate, Electrolytes, Muscle Enzymes and other Factors in the Blood of Sus Scrofa Following Repeated TASER Exposures, dated November 14, 2005.
21. Attached as Exhibit T is a true and accurate copy of Wetli Expert Report and Curriculum Vitae dated March 29, 2009.
22. Attached as Exhibit U is a true and accurate copy of, transcript of James Wilson M.D. deposition conducted on January 29, 2009.
23. Attached as Exhibit V is a true and accurate copy of transcript of Marla Donovan deposition conducted on January 28, 2009.
24. Attached as Exhibit W is a true and accurate copy of transcript of Chris Wetter deposition conducted on January 29, 2009.
25. Attached as Exhibit X is a true and accurate copy of, transcript of Brian Platt Deposition February 10, 2009.

26. Attached as Exhibit Y is a true and accurate copy of transcript of Howard Lewis deposition conducted on January 28, 2009.

27. Attached as Exhibit Z is a true and accurate copy of the 911 Emergency Transcript (Feb. 4, 2004).

28. Attached as Exhibit AA is a true and accurate copy of transcript of Jean Griffin 50-H Hearing conducted on July, 7, 2004.

29. Attached as Exhibit BB is a true and accurate copy of transcript of Mary Jane Glowczenski 50-H Hearing conducted on July, 7, 2004.

30. Attached as Exhibit CC is a true and accurate copy of Use of Force/04-0801; 04-0802, Internal Correspondence, from Sgt. Schucht to Lt. Lewis dated February 5, 2004.

31. Attached as Exhibit DD is a true and accurate copy of, Expert Report of Dr. Charles Wetli, Heston v. Salinas, Doc. No. 05-3658 (JW) (N.D. Cal.)(December 11, 2006).

32. Attached as Exhibit EE is a true and accurate copy of, Heston v. Salinas, Doc. No. 05-3658 (JW), Mot. Granting Pl's. Mot. for Attorney's Fees; Denying Def. Salina's Mot. For Costs (N.D. Cal., Jan. 30, 2009) 2009 U.S. Dist. LEXIS 10096, *2.

33. Attached as Exhibit FF is a true and accurate copy of, Abstract from American Journal of Forensic Medicine & Pathology, Vol. 32 -Issue 1, pp 31-34 dated March 2011.

34. Attached as Exhibit GG is a true and accurate copy of Dr. Maura Belviso et.al, American Journal of Forensic Medicine & Pathology, Vol. 24, No. 3, *Positional Asphyxia: Reflections on 2 Cases*, p. 292-97 (Sept. 2003).

35. Attached as Exhibit HH is a true and accurate copy of, Dr. Steven Koehler, *et. al*, Forensic Sciences, Chpt. 37B.04, *Asphyxia: Suffocation, Strangulation and Aspiration* (Matthew

Bender & Co., Inc., 2010).

36. Attached as Exhibit II is a true and accurate copy of, Dr. Wanda Mohr, et.al, The Canadian Journal of Psychiatry, *Adverse Effects Associated with Physical Restraint*, (June 2003).

37. Attached as Exhibit JJ is a true and accurate copy of, U.S. Department of Justice, Office of Justice Programs, National Institute of Justices, National Law Enforcement Technology Center Bulletin, Positional Asphyxia – Sudden Death dated June 1995.

38. Attached as Exhibit KK is a true and accurate copy of transcript of Dr. Charles Wetli deposition conducted September 27, 2010.

39. Attached as Exhibit LL is a true and accurate copy of, Memo from Segeant Christopher A. Brioche #226, Southampton Village Police Department, to Ira Cure, Subject: Reference Material dated February 28, 2007.

40. Attached as Exhibit MM is a true and accurate copy of, Dr. Mark Silberman Affidavit dated April 22, 2009.

41. Attached as Exhibit NN is a true and accurate copy of, transcript of Thomas A. Campbell deposition conducted on January 21, 2009.

42. Attached as Exhibit OO is a true and accurate copy of, Emergency Room/Outpatient Record.

43. Attached as Exhibit PP is a true and accurate copy of, transcript of Keith Phillips deposition conducted on January 21, 2009.

44. Attached as Exhibit QQ is a true and accurate copy of, Prehospital Care Report

45. Attached as Exhibit RR is a true and accurate copy of transcript of Dr. Robert Stratbucker deposition conducted on 5/14/2008.

46. Attached as Exhibit SS is a true and accurate copy of, Suffolk County Police Department's Death Report for David Glowczenski by Detective Pasquale Albergo.

47. Attached as Exhibit TT is a true and accurate copy of, James R. Jauchem PhD, Journal of Forensic and Legal Medicine, Vol. 17, *Deaths in custody: Are some due to electronic control devices (including TASER devices) or excited delirium* (2010) p.1-7.

48. Attached as Exhibit UU is a true and accurate copy of, Braidwood Commission on Conducted Energy Weapon Use, RESTORING PUBLIC CONFIDENCE: Restricting the Use of Conducted Energy Weapons in British Columbia, dated June 18, 2009.

49. Attached as Exhibit VV is a true and accurate copy of, Taser International v. British Columbia (Commissioner), [2010]B.C.J. No. 1578; 2010 BCSC 1120; 2010 B.C.C. LEXIS 1497.

50. Attached as Exhibit WW is a true and accurate copy of transcript of Michael Morse Ph.D. deposition conducted on November 14, 2007.

51. Attached as Exhibit XX is a true and accurate copy of, Suffolk County Division of Medical-Legal Investigations & Forensic Sciences Crime Laboratory, Sheet No. 1 of 1, Lab. No. 04-1018, C.C. No. 3310, Supplemental Report, by George Krivosta ,Analyst dated May 16, 2005.

52. Attached as Exhibit YY is a true and accurate copy of, Michael S. Morse, Ph.D, Curriculum Vitae dated 2009.

53. Attached as Exhibit ZZ is a true and accurate copy of, James R. Jauchem, Forensic Sci. Med. Pathol., *Repeated or long-duration TASER electronic control device exposures: acidemia and lack of respiration*, (2010) 6:46-53.

54. Attached as Exhibit AAA is a true and accurate copy of, The Amnesty International, Less Than Lethal? The Use of Stun Weapons in US Law Enforcement dated December 2008.

55. Attached as Exhibit BBB is a true and accurate copy of, The Arizona Republic, Medical Examiners Connect Stun Gun to 5 Deaths (July 18, 2004).

56. Attached as Exhibit CCC is a true and accurate copy of TASER X3, X26 and M26 ECD Warnings, Instructions, and Information: Law Enforcement (2010).

57. Attached as Exhibit DDD is a true and accurate copy of transcript of Rick Guilbault deposition conducted on May 12, 2008.

58. Attached as Exhibit EEE is a true and accurate copy of TASER International Volunteer Warnings, Liability Release and Covenant Not to Sue (2003-2005).

59. Attached as Exhibit FFF is a true and accurate copy of Advanced TASER M-Series On-line Owner's Manual (Provided by Defendant TASER International on disc).

60. Attached as Exhibit GGG is a true and accurate copy of TASER Lesson Plan 8.0.

61. Attached as Exhibit HHH is a true and accurate copy of Peyman N. Azadami, et.al, Amer. Heart Jour., *Funding source and author affiliation in TASER research are strongly associated with a conclusion of device safety*, dated 09/2011., p. 533-37.

62. Attached as Exhibit III is a true and accurate copy of transcript of William L. Manion, M.D., Ph. D. deposition conducted on October 26, 2011.

63. Attached as Exhibit JJJ is a true and accurate copy of William Manion Resume.

64. Attached as Exhibit KKK is a true and accurate copy of transcript of William Manion, M.D., deposition in *Hollman v. TASER*, No 06-CV-3588 (E.D.N.Y.) conducted on April 2, 2011.

65. Attached as Exhibit LLL is a true and accurate copy of Autopsy of David Glowczenski performed by Gerard A. Catenese (2/9/04).

66. Attached as Exhibit MMM is a true and accurate copy of Report and Recommendation of the Committee on Tasers to the Montpelier City Council (11/2/2011).

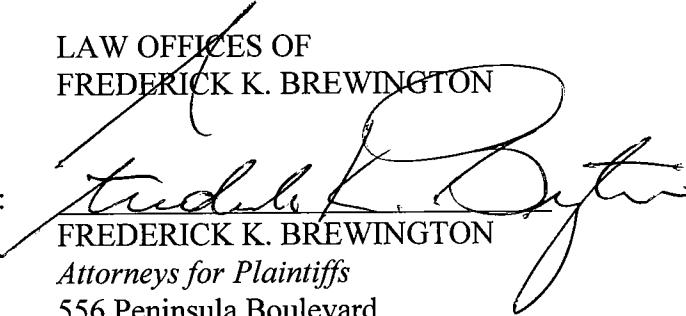
67. Attached as Exhibit NNN is a true and accurate copy of Dr. William Manion's Expert Report Re: David Glowczenski (9/4/2011).

Dated: Hempstead, New York
February 24, 2012

Respectfully submitted,

LAW OFFICES OF
FREDERICK K. BREWINGTON

By:


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